

REMARKS

In an Office Action dated 6 October 2006, the Examiner rejects claims 1-80 (All pending claims). In response to the Office Action, Applicant amends claims 7 and 36; amends the specification; cancels claims 15-17, 23-29, 44-46, 52-55, and 57-80; and respectfully traverses the rejection. The amendments have been made to clarify the invention. It is submitted that the proposed amendments to the specification and claims do not constitute new matter.

Applicants will submit a terminal disclaimer when the claims are allowed and it can be determined whether double patenting exists.

Applicant has amended the specification to more clearly explain the aging process as recited in the claims and shown in the drawings. No new matter is entered from this amendment.

The Examiner rejected claims 67, 68, 70, and 72-74 under 35 U.S.C. § 112 (2). These claims have been canceled. Therefore, Applicant respectfully requests that this rejection be removed.

The Examiner has also rejected claims 27 and 56 under 35 U.S.C. § 112 (2). These claims have been canceled. Therefore, Applicants respectfully request that the rejection be removed.

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,284,492 issued to Dubin (Dubin) in view of U.S. Patent Number 5,743,922 issued to Peter-Hoblyn (Peter). In order to

maintain a rejection the Examiner has the burden of providing evidence of prima facie obviousness. See MPEP §2143. See also In Re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In order to prove prima facie obviousness, the Examiner must provide evidence in the prior art of a motivation to combine or modify a reference, a reasonable expectation of success, and a teaching of each and every claimed element. Id. The Examiner has failed to provide a teaching that teaches each and every limitation of claim 1 and has not provided a proper motivation to combine the references.

Claim 1 recites a method that includes the step of “aging a second composition to produce an aged composition.” Neither Dubin nor Peter teaches this step in making an emulsion composition. Dubin teaches a fuel including an emulsion. However, Dubin only teaches the composition of the fuel and does not teach the method of making an emulsion. Furthermore, there is no mention anywhere in Dubin of aging the composition.

Furthermore, Peter does not teach the aging of a composition in the process of making an emulsion. The Examiner cites Figure 1 as teaching aging of the composition. Applicant has reviewed figure 1 and Peters in their entirety and can find no mention of aging or a description of an aging process. In fact Peter teaches against aging as it may allow components to settle. See Col. 4, lines 4-15. The only discussion of Figure 1 is from Col. 7, line 44 –Col. 8, line 10. This section only mentions that the one tank is used to hold the fuel and the other the emulsion prior to combustion. Thus, Peters provides no teaching of aging a composition.

For these reasons, Applicants respectfully request that the rejection be removed and claim 1 be allowed.

Furthermore, the Examiner has provided no motivation to combine the references. The Examiner merely asserts that Peter teaches that aging a mixture prior to the shearing is conventional. Applicant challenges this statement and respectfully requests the Examiner provide evidence of such statement and provide Applicant with an opportunity to respond. However, the Examiner has no reason that Peter is combined with Dubin which does not teach a method of making an emulsification. If the Examiner wishes to maintain this rejection, the Examiner must provide a motivation to combine references. Otherwise, the rejection must be removed.

For these reason Applicant respectfully requests that the rejection of claim 1 be removed and claim 1 be allowed.

Claims 2-14 and 18-22, depend from claim 1. Thus, claims 2-14 and 18-22, are allowable for at least the same reasons as claim 1. Thus, Applicant respectfully requests that the rejections of these claims be removed and claims 2-14 and 18-22 be allowed.

Claim 30 recites an emulsion composition that is generated by the method recited in claim 1. Thus, claim 30 is allowable for at least the same reason as claim 1. Thus, Applicant respectfully requests that the rejection of claim 30 be removed and claim 30 be allowed.

Claims 31- 43 and 47-57 depend from claim 30. Thus, claims 31-43 and 47-57 are allowable for at least the same reasons as claim. Therefore, Applicant respectfully requests that the rejection of claims 31-43 and 47-57 be removed and claims 31-43 and 47-57 be allowed.

If the Examiner has any questions regarding this response or the application in general, the Examiner may telephone undersigned at 775-586-9500.

Respectfully submitted,
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